

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

DAVID DAVIS,)
Plaintiff) Case Number:
v.) 3:06-CV-0544-VPM
PHENIX CITY, ALABAMA,)
JEFFREY HARDIN, named in his individual)
and official capacities,)
H.H. ROBERTS, named in his individual)
and official capacities,)
WALLACE HUNTER, named in his individual)
and official capacities,)
ROY WATERS, named in his individual)
and official capacities,)
and)
BARBARA GOODWIN, named in her individual)
and official capacities,)
Defendants.)

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL
DEFENDANTS TO PROVIDE MORE ADEQUATE DISCOVERY RESPONSES**

COME NOW Defendants Phenix City, Alabama, Jeffrey Hardin, H.H. Roberts, Wallace Hunter, Roy Waters and Barbara Goodwin and responds to Plaintiff's Motion to Compel Defendants to Provide More Adequate Discovery Responses as follows:

FACTS

The facts are much as outlined by the Plaintiff in its Memorandum supporting his Motion to Compel in this matter. The only exception taken by Defendants would be that in the conversations regarding Initial Disclosures, that Defendants' Counsel took

Plaintiff's Counsel to mean the actual Initial Disclosures, which were provided on October 16, 2006, not the sole document identified in those disclosures, the City of Phenix City's Merit System Rules & Regulations. Plaintiff's Counsel also chooses to omit any reference in his Memorandum the final communication he received from Defendants' Counsel prior to filing his Motion on January 23, 2007 in which Defendants' Counsel asked for an extension of time until January 26, 2007 to fully comply with the Request for Production of Documents that is the subject of the Motion to Compel. That message is attached to this Response as Exhibit 1.

Plaintiff has sought the compulsion of responses to two items: first, the Rule 26(a) Initial Disclosures and second the First Request for Production of Documents.

The Rule 26(a) Initial Disclosures were provided to the Plaintiff on October 16, 2006. What was not provided was a single document identified in the Initial Disclosures provided to the Plaintiff on October 16, 2006 and which Defendants stated would be provided at a later time once it was located and copied. It has in fact been provided to Plaintiff's Counsel by January 26, 2007 as Defendants' Counsel communicated to the Plaintiff that it would be done prior to the filing of Plaintiff's Motion to Compel (see Exhibit 1).

Plaintiff's First Request for Production of Documents was dated November 6, 2006. Defendants' Counsel is unsure of the exact date of receipt of the Request but acknowledges they were due in December 2006. Defendants' Counsel experienced unexpected difficulties in obtaining the requested documents from Defendants due to the multiple agencies that held different documents requested by Plaintiff. So, Defendants' Counsel requested *and Plaintiff's Counsel agreed* to an extension of time to respond to

January 15, 2007. At the time the extension was agreed upon, Defendants did not realize that the deadline fell on a federal holiday. Defendants' Counsel diligently tried to assemble the remaining documents with the relevant agents of Defendant in time to meet the January 15, 2007 deadline but due to difficulty communicating with various agencies and the notification that certain documents requested were going to have to be accessed from remote facilities, additional time was required beyond the extension agreed upon by the parties. And so, after realizing the magnitude of the problem on January 18, 2007 and having received the personnel file of the Plaintiff, one of the requested documents in this case exceeding 200 pages, Defendants' Counsel immediately transmitted the responsive documents electronically to avoid any further delay in submitting to Plaintiff's Counsel those documents that were responsive to his Request and asked for an extension of time of eight (8) days to complete Defendants' Response to Plaintiff's Request. As outlined in the message transmitted to the Plaintiff's Counsel before the filing of the Motion to Compel, all documents responsive to his request that could be identified by Defendants were copied and shipped so that they arrived in his office on January 26, 2007 as Defendants' Counsel had assured Plaintiff's Counsel they would be. Therefore, Defendants supplied Plaintiff's Counsel with all requested discovery three days after the filing of Plaintiff's Motion and as promised in Defendants' Counsel last communication with Plaintiff's Counsel transmitted five (5) days before the Motion to Compel was filed in this matter.

ARGUMENT

In summary, the Defendants have fully and completely responded to Plaintiff's

First Request for Production of Documents and Rule 26(a) Initial Disclosures. All such responses were received by the Plaintiff within eleven (11) days of the agreed upon extension of time to respond. No prejudice has been caused to the Plaintiff's case and no injury has resulted from the delayed response by the Defendants. The Motion to Compel itself was unnecessary, as Plaintiff already knew that Defendants were compiling all the relevant documents and that they were to be sent by January 26, 2007. In fact, they arrived at Plaintiff's Counsel's office in Washington, D.C. on January 26, 2007. Due to the fact that Defendants have totally and completed responded to the discovery requests at issue in the Motion and did so concomitant with a timeline communicated to Plaintiff prior to the filing of his Motion, it is clear that this discovery dispute would have resolved itself without the necessity of the Motion being filed by the Plaintiff. Given the circumstances, Defendants respectfully request that Plaintiff's request for sanctions be denied.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that Plaintiff's Motion to Compel, including the attorneys fees requested therein be DENIED as moot.

Respectfully Submitted,

This 29th day of January, 2007.

MCKOON, THOMAS & MCKOON

/s/*Joshua R. McKoon*

By: _____

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EXHIBIT 1

Defendants Response to Plaintiff's Request for Production

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Joshua McKoon <jrm2016@yahoo.com>

View Thursday, January 18, 2007 1:31:51 PM

To:Bryan Polisuk <bgp@wmlaborlaw.com>

Bryan,

We have finally received some of the documents responsive to your request for production in the Davis matter. Namely, we have received the personnel file of Mr. Davis. I am attaching to this e-mail and a scanned copy of all the documents in Mr. Davis's personnel file. We will be forwarding the same to your office by mail but I wanted to make sure you received these documents at the same time we did. We are still awaiting receipt of other documents responsive to your request for production. We anticipate that we will receive these documents no later than Friday January 26, 2007. We would appreciate your cooperation by allowing us until that time to respond to the remaining requests. I'm sorry for this continued delay and please know that we are doing everything we can to get our client to respond promptly. I have divided the personnel file of Mr. Davis into four separate PDF files. The first of which will be attached to this e-mail, and each additional file will accompany another e-mail for a total of four e-mails from me.

Regards,

Josh

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Defendants' Response to Plaintiff's Motion to Compel upon Counsel for the Plaintiff by placing a copy of same in First Class Mail addressed as follows:

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Molly A. Elkin
Bryan G. Polisuk
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/s/Joshua R. McKoon

Counsel for Defendants